

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LARRY HEGGEM,

Plaintiff,

vs.

SNOHOMISH COUNTY CORRECTIONS,
et al.,

Defendants.

Case No. C11-1333 RSM

ORDER DENYING MOTIONS

This matter comes before the Court upon the following motions by Plaintiff Larry Heggem: Motion for Summary Judgment (Dkt. # 415), Motion to Compel Court Order (Dkt. # 417), and Motion for Discretionary Review (Dkt. # 419). Having considered the parties' memoranda and the relevant record, and being fully informed, the Court denies all three motions for the reasons stated herein.

First, Mr. Heggem moves for summary judgment on his excessive use of force claim against the two remaining defendants in this case, Sergeant Miller and Officer Nicholas. Dkt. # 415. On July 25, 2012, the Court adopted Judge Tsuchida's Report and Recommendation, denying summary judgment as to these two defendants in consideration of the "stark differences between the parties' claims" about the severity of the force they employed against Plaintiff. Dkt.

1 # 161, p. 11; Dkt. # 205. After extending the discovery period on request of the parties, *see, e.g.*,
2 Dkt. # 296, the Court entered a Scheduling Order on January 17, 2014, setting a dispositive
3 motions deadline of August 5, 2014. Dkt. # 305.

4 The instant Motion for Summary Judgment, filed 216 days after this dispositive motions
5 deadline, is clearly untimely and cannot be considered absent good cause for an extension. *See*
6 LCR 16(b)(3) (providing that summary judgment motions must be filed by the dispositive
7 motions deadline). Plaintiff has not sought a modification of the pre-trial schedule, and the Court
8 fails to identify good cause for extending the deadline at this late stage. *See* Fed. R. Civ. P.
9 16(b)(4) (“A schedule may be modified only for good cause and with the judge’s consent.”);
10 LCR 16(b)(4) (“Mere failure to complete discovery within the time allowed does not constitute
11 good cause for an extension or continuance.”); *Zivkovic v. Southern California Edison Co.*, 302
12 F.3d 1080, 1087 (9th Cir. 2002) (a party demonstrates good cause for modification of the case
13 schedule by showing that, despite the exercise of due diligence, he was unable to meet the
14 deadlines set by the Court.). Although Plaintiff contends that the Motion is based on newly
15 discovered evidence, it is premised entirely on evidence disclosed during the discovery period.
16 Good cause is particularly wanting here, where Plaintiff was represented by counsel when the
17 dispositive motions deadline lapsed, and the trial date was only continued in consideration of
18 Plaintiff’s decision to file suit against his appointed counsel.
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22 Plaintiff, through his supplemental response brief, argues that the Motion should be
23 considered timely because it was filed more than 30 days before the current trial date. Plaintiff
24 misreads the Federal Rules. Federal Rule of Civil Procedure 56(b) allows a party to file a
25 summary judgment motion anytime until 30 days after the close of discovery, unless the Court
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1 orders otherwise. *See* Fed. R. Civ. P. 56(b). The discovery period in this case closed on July 7,
2 2014, *see* Dkt. # 305, and the Court has already denied Plaintiff's request to reopen it. *See* Dkt. #
3 394. In addition, Plaintiff's 94-page Motion is well beyond the 24-page limit set by the Local
4 Rules and may be stricken on this ground alone. *See* LCR 7(e)(3). Despite its length, it fails to
5 persuade the Court to revisit its earlier determination that there are genuine issues as to material
6 facts that must be resolved at trial by the appropriate trier of fact.
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8 Second, Plaintiff's Motion to Compel seeks a Court-ordered MRI scan of his spine, wrist,
9 hips, and elbows. *See* Dkt. # 417. Through this Motion, Plaintiff moves the Court to re-open the
10 discovery period—relief already denied by the Court. *See* Dkt. # 394. Plaintiff filed the instant
11 request well beyond the June 6, 2014 deadline for discovery-related motions, *See* Dkt. # 305, and
12 again makes no showing of good cause to reset long-lapsed deadlines. *See* LCR 16(b)(4).
13 Plaintiff's untimely request shall also be denied.
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15 Third, Plaintiff's Motion for Discretionary Review moves the Court to conduct a
16 "discretionary review of former Defendant Matthew Eichelberger's declaration and deposition
17 statement." Dkt. # 419. The Court entered an Order on October 3, 2014, following oral
18 argument, granting Deputy Eichelberger's motion to dismiss him from this case. Dkt. # 354.
19 Plaintiff's Motion for Reconsideration of this Order was denied shortly thereafter. *See* Dkt. #
20 371. The Court construes Plaintiff's instant Motion as a second Motion for Reconsideration of
21 the Court's Order dismissing Deputy Eichelberger from this action. Local Rule 7(h) allows for
22 only one motion for reconsideration to be filed within fourteen days after the order to which it
23 relates is filed. LCR 7(h)(2). Plaintiff's Motion is thus both improper and untimely. Plaintiff's
24 Motion also fails to show manifest legal error in the Court's prior ruling or any facts or legal
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1 authority that could not have been timely presented to this Court. *See* LCR 7(h)(1) (“Motions for
 2 reconsideration are disfavored.”). Plaintiff’s Motion shall accordingly be denied on its merits as
 3 well.¹

4 Finally, Plaintiff is advised that the failure to comply with the Federal Rules of Civil
 5 Procedure, the Local Rules, and the orders of this Court are all sanctionable offenses. LCR 11(c).
 6 Similarly, Plaintiff’s decision to file unnecessary motions or to otherwise multiply or obstruct the
 7 proceedings in this case may subject him to imposition of any such penalty that this Court deems
 8 proper and just. *Id.*²

10 CONCLUSION

11 For the reasons stated herein, it is hereby ORDERED that Plaintiff’s Motion for
 12 Summary Judgment (Dkt. # 415), Motion to Compel Court Order (Dkt. # 417), and Motion for
 13 Discretionary Review (Dkt. # 419) are DENIED.

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19 ¹ Plaintiff’s response brief re-styles his Motion for Discretionary Review as a “supplemental pleading.” *See* Dkt. #
 20 431. It is unclear to the Court what Plaintiff intends by this new designation. To the extent that Plaintiff seeks to file
 21 an amended complaint alleging new facts against this dismissed defendant, Plaintiff is reminded that the Court did
 22 not grant him leave to amend in its Order dismissing Deputy Eichelberger. *See* Dkt. # 354. Plaintiff’s Motion
 23 provides no basis to reconsider the Court’s long-settled decision that Plaintiff’s claim against Deputy Eichelberger is
 24 barred on account of the former defendant’s qualified immunity. As Plaintiff’s request is improper and amendment
 25 would be futile, it too shall be denied. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1988)
 26 (leave to amend need not be granted if amendment would be futile).

² Local Rule 11(c) provides, in relevant part: “An attorney or party who without just cause fails to comply with any
 of the Federal Rules of Civil or Criminal Procedure, these rules, or an order of the court, or who presents to the court
 unnecessary motions or unwarranted opposition to motions, or who fails to prepare for presentation to the court, or
 who otherwise so multiplies or obstructs the proceedings in a case may, in addition to or in lieu of the sanctions and
 penalties provided elsewhere in these rules, be required by the court to satisfy personally such excess costs and may
 be subject to such other sanctions as the court may deem appropriate.”

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2 Plaintiff is advised to respect the Court-ordered deadlines in this case and to avoid
3 obstructing the efficient conduct of these proceedings, as this case proceeds to trial on May 11,
4 2015. *See* Dkt. # 423.
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6 Dated this 3rd day of April 2015.

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9 RICARDO S. MARTINEZ
10 UNITED STATES DISTRICT JUDGE
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